

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARTIN J. BIBBS,

Plaintiff,

v.

JOHN WALKENHORST, RENEE
WALKENHORST and WALKENHORST'S
VENDOR,

Defendants.

Case No.: C 12-2197 CW (PR)

ORDER FOR PLAINTIFF TO SERVE
DECEASED DEFENDANT

Plaintiff, a state prisoner incarcerated at Pelican Bay State Prison (PBSP), has filed a pro se civil rights action pursuant to 42 U.S.C. § 1983, alleging the violation of his constitutional rights by Defendants who are alleged to be in contract with PBSP. Plaintiff has paid the \$350 filing fee and has served Defendants.

On September 4, 2013, Defendants John Walkenhorst and Walkenhorst's, Inc. filed an answer to the complaint. In paragraph 4 of the answer, they indicate that Defendant Renee Walkenhorst is deceased.

Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, a defendant must be served within 120 days after the complaint is filed. If not, the court must dismiss without prejudice the action against that defendant, or order that service be made within a specified time.

Plaintiff filed this action on May 2, 2012. Therefore, more than 120 days has passed from the date the action was filed and Plaintiff has not served the estate of deceased Defendant Renee Walkenhorst. The Court grants Plaintiff an additional thirty days from the date of this Order to serve the executor or representative of Defendant Renee Walkenhorst's estate. Plaintiff

1 must file a proof of such service with the Court. If Plaintiff
2 does not file proof of service within thirty days, the claims
3 against Renee Walkenhorst shall be dismissed; the claims against
4 the other Defendants shall proceed. If Plaintiff decides not to
5 serve the executor or representative of Renee Walkenhorst's
6 estate, he must so advise the Court within thirty days, and the
7 action shall proceed against the remaining two Defendants.

8 IT IS SO ORDERED.

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10 Dated: 9/24/2013

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12 CLAUDIA WILKEN
13 UNITED STATES DISTRICT JUDGE
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